

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|----------------------------|---|---------------|
| THE BANKRUPTCY OF ROCKDALE |) | |
| DEVELOPMENT COMPANY, INC. |) | CASE NO. 9264 |

ORDER ON REHEARING

On January 31, 1985, the Commission issued an Order invoking the third party agreement purportedly negotiated by Rockdale Development Company, Inc., ("Rockdale") and the First Bank & Trust Company of Ashland, Kentucky ("Bank"). Therein, the Bank was ordered to immediately take over the operations of Rockdale so as to protect the sewage service to the utility's residential customers.

On February 6, 1985, the Bank filed an application for rehearing of the Commission's January 31, 1985, Order. Therein, the Bank alleged that no officer of the Bank signed the third party agreement and that the signature of Mr. Donald Smith on the agreement was a forgery. To consider the issue of the validity of the third party agreement, the Commission granted rehearing in this matter.

An evidentiary hearing was held in the Commission's offices on March 14, 1985. Along with representatives of Rockdale and the Bank, the Daleview Homeowners Association, Inc., ("Daleview") intervened and participated in the hearing. Daleview is com-

prised of the homeowners served by Rockdale who have formed an association to take over and operate Rockdale after its abandonment by the owner through bankruptcy proceedings. Daleview has indicated that it will shortly file an application with this Commission for formal approval of the transfer of Rockdale's utility assets to Daleview.

Mr. Donald Smith was the first witness to testify. The signature of a "Donald Smith" is on the 1978 third party agreement as the representative of the Bank. Mr. Smith's signature appears on the December 21, 1978, document as "Donald Smith, President." Mr. Smith testified that he did not sign this document in December, 1978, and, at that time, that he was not "president" of the Bank but was, instead, a vice president and manager of a branch of the Bank that seldom dealt with financing real estate developments. Mr. Smith further testified that he never signs his name "Donald Smith" but, instead uses either "Don Smith" or "Donald E. Smith." Finally, Mr. Smith submitted copies of his handwriting for comparison with the handwriting purporting to be his signature on the 1978 third party agreement.

Mr. Carl Gibbs, the owner of Rockdale, was present in the hearing room but, upon advice of counsel, declined to give any testimony on this matter, invoking his right to remain silent under the Fifth Amendment to the United States Constitution.

Upon consideration of the record adduced in this matter and being advised, the Commission hereby finds that probative evidence of record supports the Bank's contention that its employee, Mr. Donald Smith, did not sign the December 21, 1978, third party

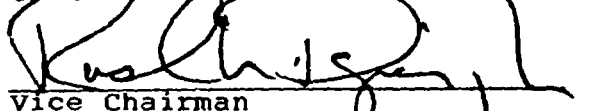
agreement between Rockdale and the Bank. No evidence in the record supports any other conclusion.

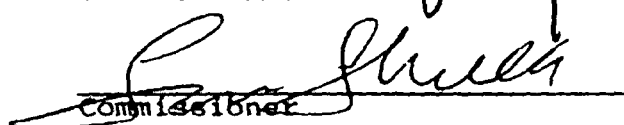
IT IS THEREFORE ORDERED that the Commission's Order of January 31, 1985, invoking the third party agreement is hereby rescinded.

Done at Frankfort, Kentucky, this 29th day of March, 1985.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Secretary